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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/390,026	09/03/1999	CHARLES A. PEYSER	07710.0001-0	6211

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EXAMINER

BONDERER, DAVID A

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 06/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/390,026	PEYSER ET AL.	
	Examiner	Art Unit	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 03 September 1999.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-38 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-38 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \*    c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3,4.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear as to what the is meant by the term "demographics."

In light of the above informalities, the claims have been examined as could best be understood by the examiner. The examiner's failure to apply prior art to any of the claims should not be construed as an indication of allowable subject matter.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit et al..

Shavit discloses a an interactive market management system comprising:

- Receiving a request for purchase from a buyer;
- Providing the request to a plurality of sellers;
- Providing a reply to the buyer;
- Receiving a selection from the buyer in response;
- Notifying the seller of the selection;
- Registering the buyer;
- Obtaining contact information from the buyer;
- Obtaining the buyer name;
- Assigning a password to the buyer;
- Obtaining business needs/demographics of the buyer;
- Obtaining billing information of the seller;
- Receiving information as to the location, the needed goods/services, and the features of the goods/services;
- Complies a list of sellers to receive the request;
- Sending information to those sellers;
- Denying the continuation of the process when the buyers ID is not confirmed;
- Presenting contractual terms of the desired agreement;
- Receiving acceptance of the terms from the buyer;
- Sellers provide information as to the types of business that they are looking for;
- Filtering out sellers that are unable to fill the desired orders;
- A memory that stores data;

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- A processor that can automatically prepare a bid from the sellers;
- Transfer the automatically prepared bid to the user and allow the user to respond;
- and
- Provides the sellers with the identification of the buyer.

It has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from the prior art invention the claimed method limitations. *Ex parte Masham*, 2 USPQ 1964 (1987). The use of the claimed invention for the selling telecommunications is not germane to the invention itself.

Shavit lacks the input of prior usage of the buyer into the system. It is notoriously well known in the art at the time of the invention to ask what the buyers past usage is. Sellers like to know for many reasons. One of them being if the buyer is a large consumer they may want to underbid to receive future volume. Another being that they want to know the projected future use to determine what volume plans they may qualify. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide an input as to the past usage of the buyer.

6. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit et al. in view of Walker et al. (5,794,207).

Shavit is not explicitly clear on the distribution of information to a plurality of sellers. Shavit states that the system processes transactions between a "plurality of different types of independent users including at least a plurality of sellers, and a plurality of buyers [.]" It is also clear that the user can specify one or more distributors. Therefore, the invention allows for the providing the request to a plurality of sellers.

However, even if Shavit lacks the purchase request going out to a number of different sellers, Walker teaches the supplying the request of users to many qualified sellers. It would have

been obvious to one of ordinary skill in the art at the time of the invention to provide Shavit with the explicit distribution of request orders to qualified sellers as taught by Walker in order to stimulate competition and determine the true market value.

Walker also states that corporations that use the request for proposal systems will cut prices for volume. It is obvious that a seller would want to know how much product/services the buyer uses in determining how to bid the request. If the buyer appears to be a large consumer, they would want the repeat business. This is well known to one of ordinary skill in the art and has been in practice for quite sometime.

7. Claims 4, 7, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit in view of Thomas et al.

Shavit doesn't expressly acquire the demographics or the prior needs/use of the buyer. This information can be inferred from what the buyer is ordering. Also, Shavit discloses the use of a financial institution in the process to supply credit to the users. The type of goods/services that one request provides a good indication as to the buyer does and uses, and the credit one has provides a good indication as to the stability of the company.

Also, Shavit discloses that the seller may deny a request because of the identity of the buyer. This insinuates that information about the user exist and is made available to sellers.

However, Thomas teaches the acquiring information regarding the business demographics of a company. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Shavit with a means to inquire as to the nature of the firm taught by Thomas in order to determine if one wants to do business (is the company is stable; is it big enough contracts to warrant the time and energy) with that firm.

It is also well known to one of ordinary skill in the art at the time of the invention to ask about the usage of the product. Telephone companies have done it for years to determine what plans to offer clients.

*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leonard, Luke et al., Moen et al., Chelliah et al., and Shkedy disclose types of methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Austin Bonderer whose telephone number is 703.306.5911. The examiner can normally be reached on Monday- Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W Coggins can be reached on 703.308.1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.7687 for regular communications and 703.305.7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.113.

dab   
June 12, 2002



WYNN W. COGGINS  
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